

Calendar No. 240

107TH CONGRESS
1ST SESSION

H. R. 2983

IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2001

Received and read the first time

NOVEMBER 29, 2001

Read the second time and placed on the calendar

AN ACT

To extend indemnification authority under section 170 of the Atomic Energy Act of 1954, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Price-Anderson Reau-
3 thorization Act of 2001”.

4 **SEC. 2. EXTENSION OF INDEMNIFICATION AUTHORITY.**

5 (a) INDEMNIFICATION OF NUCLEAR REGULATORY
6 COMMISSION LICENSEES.—Section 170 c. of the Atomic
7 Energy Act of 1954 (42 U.S.C. 2210(c)) is amended—

8 (1) in the subsection heading, by striking “LI-
9 CENSES” and inserting “LICENSEES”; and

10 (2) by striking “August 1, 2002” each place it
11 appears and inserting “August 1, 2017”.

12 (b) INDEMNIFICATION OF DEPARTMENT OF ENERGY
13 CONTRACTORS.—Section 170 d.(1)(A) of the Atomic En-
14 ergy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended
15 by striking “August 1, 2002” and inserting “August 1,
16 2017”.

17 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
18 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act
19 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-
20 gust 1, 2002” each place it appears and inserting “August
21 1, 2017”.

22 **SEC. 3. MAXIMUM ASSESSMENT.**

23 Section 170 b.(1) of the Atomic Energy Act of 1954
24 (42 U.S.C. 2210(b)(1)) is amended—

25 (1) in the second proviso of the third
26 sentence—

1 (A) by striking “\$63,000,000” and insert-
 2 ing “\$94,000,000”; and

3 (B) by striking “\$10,000,000 in any 1
 4 year” and inserting “\$15,000,000 in any 1 year
 5 (subject to adjustment for inflation under sub-
 6 section t.)”; and

7 (2) in subsection t.—

8 (A) by inserting “total and annual” after
 9 “amount of the maximum”;

10 (B) by striking “the date of the enactment
 11 of the Price-Anderson Amendments Act of
 12 1988” and inserting “July 1, 2001”; and

13 (C) by striking “such date of enactment”
 14 and inserting “July 1, 2001”.

15 **SEC. 4. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

16 (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY
 17 CONTRACTORS.—Section 170 d. of the Atomic Energy Act
 18 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-
 19 graph (2) and inserting the following:

20 “(2) INDEMNIFICATION AGREEMENTS.—In an agree-
 21 ment of indemnification entered into under paragraph (1),
 22 the Secretary—

23 “(A) may require the contractor to provide and
 24 maintain the financial protection of such a type and
 25 in such amounts as the Secretary shall determine to

1 be appropriate to cover public liability arising out of
2 or in connection with the contractual activity; and

3 “(B) shall indemnify the persons indemnified
4 against such liability above the amount of the finan-
5 cial protection required, in the amount of
6 \$10,000,000,000 (subject to adjustment for inflation
7 under subsection t.), in the aggregate, for all per-
8 sons indemnified in connection with the contract and
9 for each nuclear incident, including such legal costs
10 of the contractor as are approved by the Secretary.”.

11 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
12 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is
13 amended by striking paragraph (3) and inserting the fol-
14 lowing:

15 “(3) CONTRACT AMENDMENTS.—All agreements of
16 indemnification under which the Department of Energy
17 (or its predecessor agencies) may be required to indemnify
18 any person under this section shall be deemed to be
19 amended, on the date of enactment of the Price-Anderson
20 Reauthorization Act of 2001, to reflect the amount of in-
21 demnity for public liability and any applicable financial
22 protection required of the contractor under this sub-
23 section.”.

1 (c) LIABILITY LIMIT.—Section 170 e.(1)(B) of the
2 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is
3 amended—

4 (1) by striking “the maximum amount of finan-
5 cial protection required under subsection b. or”; and

6 (2) by striking “paragraph (3) of subsection d.,
7 whichever amount is more” and inserting “para-
8 graph (2) of subsection d.”.

9 **SEC. 5. INCIDENTS OUTSIDE THE UNITED STATES.**

10 (a) AMOUNT OF INDEMNIFICATION.—Section 170
11 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
12 2210(d)(5)) is amended by striking “\$100,000,000” and
13 inserting “\$500,000,000”.

14 (b) LIABILITY LIMIT.—Section 170 e.(4) of the
15 Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is
16 amended by striking “\$100,000,000” and inserting
17 “\$500,000,000”.

18 **SEC. 6. REPORTS.**

19 Section 170 p. of the Atomic Energy Act of 1954 (42
20 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
21 and inserting “August 1, 2013”.

22 **SEC. 7. INFLATION ADJUSTMENT.**

23 Section 170 t. of the Atomic Energy Act of 1954 (42
24 U.S.C. 2210(t)) is amended—

1 (1) by redesignating paragraph (2) as para-
2 graph (3); and

3 (2) by adding after paragraph (1) the following:

4 “(2) ADJUSTMENT.—The Secretary shall adjust the
5 amount of indemnification provided under an agreement
6 of indemnification under subsection d. not less than once
7 during each 5-year period following July 1, 2001, in ac-
8 cordance with the aggregate percentage change in the
9 Consumer Price Index since—

10 “(A) that date, in the case of the first adjust-
11 ment under this paragraph; or

12 “(B) the previous adjustment under this para-
13 graph.”.

14 **SEC. 8. PRICE-ANDERSON TREATMENT OF MODULAR REAC-**
15 **TORS.**

16 Section 170 b. of the Atomic Energy Act of 1954 (42
17 U.S.C. 2210(b)) is amended by adding at the end the fol-
18 lowing new paragraph:

19 “(5)(A) For purposes of this section only, the Com-
20 mission shall consider a combination of facilities described
21 in subparagraph (B) to be a single facility having a rated
22 capacity of 100,000 electrical kilowatts or more.

23 “(B) A combination of facilities referred to in sub-
24 paragraph (A) is 2 or more facilities located at a single
25 site, each of which has a rated capacity of 100,000 elec-

1 trical kilowatts or more but not more than 300,000 elec-
2 trical kilowatts, with a combined rated capacity of not
3 more than 1,300,000 electrical kilowatts.”.

4 **SEC. 9. APPLICABILITY.**

5 The amendments made by sections 3, 4, and 5 do
6 not apply to a nuclear incident that occurs before the date
7 of enactment of this Act.

8 **SEC. 10. PROHIBITION ON ASSUMPTION BY UNITED STATES**

9 **GOVERNMENT OF LIABILITY FOR CERTAIN**
10 **FOREIGN ACCIDENTS.**

11 Section 170 of the Atomic Energy Act of 1954 (42
12 U.S.C. 2210) is amended by adding at the end the fol-
13 lowing new subsection:

14 “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR
15 CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this
16 section or any other provision of law, no officer of the
17 United States or of any department, agency, or instrumen-
18 tality of the United States Government may enter into any
19 contract or other arrangement, or into any amendment or
20 modification of a contract or other arrangement, the pur-
21 pose or effect of which would be to directly or indirectly
22 impose liability on the United States Government, or any
23 department, agency, or instrumentality of the United
24 States Government, or to otherwise directly or indirectly
25 require an indemnity by the United States Government,

1 for nuclear accidents occurring in connection with the de-
2 sign, construction, or operation of a production facility or
3 utilization facility in any country whose government has
4 been identified by the Secretary of State as engaged in
5 state sponsorship of terrorist activities (specifically includ-
6 ing any country the government of which, as of September
7 11, 2001, had been determined by the Secretary of State
8 under section 620A(a) of the Foreign Assistance Act of
9 1961, section 6(j)(1) of the Export Administration Act of
10 1979, or section 40(d) of the Arms Export Control Act
11 to have repeatedly provided support for acts of inter-
12 national terrorism).’’.

13 **SEC. 11. SECURE TRANSFER OF NUCLEAR MATERIALS.**

14 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
15 Act of 1954 (42 U.S.C. 2201–2210b) is amended by add-
16 ing at the end the following new section:

17 “SEC. 170C. SECURE TRANSFER OF NUCLEAR MA-
18 TERIALS.—

19 “a. The Nuclear Regulatory Commission shall estab-
20 lish a system to ensure that, with respect to activities by
21 any party pursuant to a license issued under this Act—

22 “(1) materials described in subsection b., when
23 transferred or received in the United States—

24 “(A) from a facility licensed by the Nu-
25 clear Regulatory Commission;

1 “(B) from a facility licensed by an agree-
2 ment State; or

3 “(C) from a country with whom the United
4 States has an agreement for cooperation under
5 section 123,

6 are accompanied by a manifest describing the type
7 and amount of materials being transferred;

8 “(2) each individual transferring or accom-
9 panying the transfer of such materials has been sub-
10 ject to a security background check by appropriate
11 Federal entities; and

12 “(3) such materials are not transferred to or
13 received at a destination other than a facility li-
14 censed by the Nuclear Regulatory Commission or an
15 agreement State under this Act or other appropriate
16 Federal facility, or a destination outside the United
17 States in a country with whom the United States
18 has an agreement for cooperation under section 123.

19 “b. Except as otherwise provided by the Commission
20 by regulation, the materials referred to in subsection a.
21 are byproduct materials, source materials, special nuclear
22 materials, high-level radioactive waste, spent nuclear fuel,
23 transuranic waste, and low-level radioactive waste (as de-
24 fined in section 2(16) of the Nuclear Waste Policy Act
25 of 1982 (42 U.S.C. 10101(16))).”.

1 (b) REGULATIONS.—Not later than 1 year after the
 2 date of the enactment of this Act, and from time to time
 3 thereafter as it considers necessary, the Nuclear Regu-
 4 latory Commission shall issue regulations identifying ra-
 5 dioactive materials that, consistent with the protection of
 6 public health and safety and the common defense and se-
 7 curity, are appropriate exceptions to the requirements of
 8 section 170C of the Atomic Energy Act of 1954, as added
 9 by subsection (a) of this section.

10 (c) EFFECTIVE DATE.—The amendment made by
 11 subsection (a) shall take effect upon the issuance of regu-
 12 lations under subsection (b).

13 (d) EFFECT ON OTHER LAW.—Nothing in this sec-
 14 tion or the amendment made by this section shall waive,
 15 modify, or affect the application of chapter 51 of title 49,
 16 United States Code, part A of subtitle V of title 49,
 17 United States Code, part B of subtitle VI of title 49,
 18 United States Code, and title 23, United States Code.

19 (e) TABLE OF SECTIONS AMENDMENT.—The table of
 20 sections for chapter 14 of the Atomic Energy Act of 1954
 21 is amended by adding at the end the following new item:

“Sec. 170C. Secure transfer of nuclear materials.”.

22 **SEC. 12. NUCLEAR FACILITY THREATS.**

23 (a) STUDY.—The President, in consultation with the
 24 Nuclear Regulatory Commission and other appropriate
 25 Federal, State, and local agencies and private entities,

1 shall conduct a study to identify the types of threats that
2 pose an appreciable risk to the security of the various
3 classes of facilities licensed by the Nuclear Regulatory
4 Commission under the Atomic Energy Act of 1954. Such
5 study shall take into account, but not be limited to—

6 (1) the events of September 11, 2001;

7 (2) an assessment of physical, cyber, bio-
8 chemical, and other terrorist threats;

9 (3) the potential for attack on facilities by mul-
10 tiple coordinated teams of a large number of individ-
11 uals;

12 (4) the potential for assistance in an attack
13 from several persons employed at the facility;

14 (5) the potential for suicide attacks;

15 (6) the potential for water-based and air-based
16 threats;

17 (7) the potential use of explosive devices of con-
18 siderable size and other modern weaponry;

19 (8) the potential for attacks by persons with a
20 sophisticated knowledge of facility operations;

21 (9) the potential for fires, especially fires of
22 long duration; and

23 (10) the potential for attacks on spent fuel
24 shipments by multiple coordinated teams of a large
25 number of individuals.

1 (b) SUMMARY AND CLASSIFICATION REPORT.—Not
2 later than 180 days after the date of the enactment of
3 this Act, the President shall transmit to the Congress and
4 the Nuclear Regulatory Commission a report—

5 (1) summarizing the types of threats identified
6 under subsection (a); and

7 (2) classifying each type of threat identified
8 under subsection (a), in accordance with existing
9 laws and regulations, as either—

10 (A) involving attacks and destructive acts,
11 including sabotage, directed against the facility
12 by an enemy of the United States, whether a
13 foreign government or other person, or other-
14 wise falling under the responsibilities of the
15 Federal Government; or

16 (B) involving the type of risks that Nu-
17 clear Regulatory Commission licensees should
18 be responsible for guarding against.

19 (c) FEDERAL ACTION REPORT.—Not later than 90
20 days after the date on which a report is transmitted under
21 subsection (b), the President shall transmit to the Con-
22 gress a report on actions taken, or to be taken, to address
23 the types of threats identified under subsection (b)(2)(A).
24 Such report may include a classified annex as appropriate.

1 (d) REGULATIONS.—Not later than 270 days after
2 the date on which a report is transmitted under subsection
3 (b), the Nuclear Regulatory Commission shall issue regu-
4 lations, including changes to the design basis threat, to
5 ensure that licensees address the threats identified under
6 subsection (b)(2)(B).

7 (e) PHYSICAL SECURITY PROGRAM.—The Nuclear
8 Regulatory Commission shall establish an operational
9 safeguards response evaluation program that ensures that
10 the physical protection capability and operational safe-
11 guards response for sensitive nuclear facilities, as deter-
12 mined by the Commission consistent with the protection
13 of public health and the common defense and security,
14 shall be tested periodically through Commission approved
15 or designed, observed, and evaluated force-on-force exer-
16 cises to determine whether the ability to defeat the design
17 basis threat is being maintained. For purposes of this sub-
18 section, the term “sensitive nuclear facilities” includes at
19 a minimum commercial nuclear power plants, including
20 associated spent fuel storage facilities, spent fuel storage
21 pools and dry cask storage at closed reactors, independent
22 spent fuel storage facilities and geologic repository oper-
23 ations areas, category I fuel cycle facilities, and gaseous
24 diffusion plants.

1 (f) CONTROL OF INFORMATION.—In carrying out this
2 section, the President and the Nuclear Regulatory Com-
3 mission shall control the dissemination of restricted data,
4 safeguards information, and other classified national secu-
5 rity information in a manner so as to ensure the common
6 defense and security, consistent with chapter 12 of the
7 Atomic Energy Act of 1954.

8 **SEC. 13. INDUSTRIAL SAFETY RULES FOR DEPARTMENT OF**
9 **ENERGY NUCLEAR FACILITIES.**

10 Section 170 d. of the Atomic Energy Act of 1954 (42
11 U.S.C. 2210(d)) is amended by adding at the end the fol-
12 lowing new paragraph:

13 “(8)(A) It shall be a condition of any agreement of
14 indemnification entered into under this subsection that the
15 indemnified party comply with regulations issued under
16 this paragraph.

17 “(B) Not later than 180 days after the date of the
18 enactment of this paragraph, the Secretary shall issue in-
19 dustrial health and safety regulations that shall apply to
20 all Department of Energy contractors and subcontractors
21 who are covered under agreements entered into under this
22 subsection for operations at Department of Energy nu-
23 clear facilities. Such regulations shall provide a level of
24 protection of worker health and safety that is substantially
25 equivalent to or identical to that provided by the industrial

1 and construction safety regulations of the Occupational
2 Safety and Health Administration (29 CFR 1910 and
3 1926), and shall establish civil penalties for violation
4 thereof that are substantially equivalent to or identical to
5 the civil penalties applicable to violations of the industrial
6 and construction safety regulations of the Occupational
7 Safety and Health Administration. The Secretary shall
8 amend regulations under this subparagraph as necessary.

9 “(C) Not later than 240 days after the date of the
10 enactment of this paragraph, all agreements described in
11 subparagraph (B), and all contracts and subcontracts for
12 the indemnified contractors and subcontractors, shall be
13 modified to incorporate the requirements of the regula-
14 tions issued under subparagraph (B). Such modifications
15 shall require compliance with the requirements of the reg-
16 ulations not later than 1 year after the issuance of the
17 regulations.

18 “(D) Enforcement of regulations issued under sub-
19 paragraph (B), and inspections required in the course
20 thereof, shall be conducted by the Office of Enforcement
21 of the Office of Environment, Safety, and Health of the
22 Department of Energy. The Secretary shall transmit to
23 the Congress an annual report on the implementation of
24 this subparagraph.

1 “(E) This paragraph shall not apply to facilities and
2 activities covered by section 7 of the Export Administra-
3 tion Act of 1979 (50 U.S.C. 2406).”.

4 **SEC. 14. UNREASONABLE RISK CONSULTATION.**

5 Section 170 of the Atomic Energy Act of 1954 (42
6 U.S.C. 2210) is amended by adding at the end the fol-
7 lowing new subsection:

8 “V. UNREASONABLE RISK CONSULTATION.—Before
9 entering into an agreement of indemnification under this
10 section with respect to a utilization facility, the Nuclear
11 Regulatory Commission shall consult with the Assistant
12 to the President for Homeland Security (or any successor
13 official) concerning whether the location of the proposed
14 facility and the design of that type of facility ensure that
15 the facility provides for adequate protection of public
16 health and safety if subject to a terrorist attack.”.

17 **SEC. 15. FINANCIAL ACCOUNTABILITY.**

18 (a) AMENDMENT.—Section 170 of the Atomic En-
19 ergy Act of 1954 (42 U.S.C. 2210) is amended by adding
20 at the end the following new subsection:

21 “W. FINANCIAL ACCOUNTABILITY.—(1) Notwith-
22 standing subsection d., the Attorney General may bring
23 an action in the appropriate United States district court
24 to recover from a contractor of the Secretary (or subcon-
25 tractor or supplier of such contractor) amounts paid by

1 the Federal Government under an agreement of indem-
2 nification under subsection d. for public liability resulting
3 from conduct which constitutes intentional misconduct of
4 any corporate officer, manager, or superintendent of such
5 contractor (or subcontractor or supplier of such con-
6 tractor).

7 “(2) The Attorney General may recover under para-
8 graph (1) an amount not to exceed the amount of the prof-
9 it derived by the defendant from the contract.

10 “(3) No amount recovered from any contractor (or
11 subcontractor or supplier of such contractor) under para-
12 graph (1) may be reimbursed directly or indirectly by the
13 Department of Energy.

14 “(4) Paragraph (1) shall not apply to any nonprofit
15 entity conducting activities under contract for the Sec-
16 retary.

17 “(5) No waiver of a defense required under this sec-
18 tion shall prevent a defendant from asserting such defense
19 in an action brought under this subsection.

20 “(6) The Secretary shall, by rule, define the terms
21 ‘profit’ and ‘nonprofit entity’ for purposes of this sub-
22 section. Such rulemaking shall be completed not later than
23 180 days after the date of the enactment of this sub-
24 section.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall not apply to any agreement of indem-
3 nification entered into under section 170 d. of the Atomic
4 Energy Act of 1954 (42 U.S.C. 2210(d)) before the date
5 of the enactment of this Act.

6 **SEC. 16. CIVIL PENALTIES.**

7 (a) REPEAL OF AUTOMATIC REMISSION.—Section
8 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C.
9 2282a(b)(2)) is amended by striking the last sentence.

10 (b) LIMITATION FOR NONPROFIT INSTITUTIONS.—
11 Subsection d. of section 234A of the Atomic Energy Act
12 of 1954 (42 U.S.C. 2282a(d)) is amended to read as fol-
13 lows:

14 “d. Notwithstanding subsection a., a civil penalty for
15 a violation under subsection a. shall not exceed the amount
16 of any discretionary fee paid under the contract under
17 which such violation occurs for any nonprofit contractor,
18 subcontractor, or supplier—

19 “(1) described in section 501(c)(3) of the Inter-
20 nal Revenue Code of 1986 and exempt from tax
21 under section 501(a) of such Code; or

22 “(2) identified by the Secretary by rule as ap-
23 propriate to be treated the same under this sub-
24 section as an entity described in paragraph (1), con-
25 sistent with the purposes of this section.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall not apply to any violation of the Atomic
3 Energy Act of 1954 occurring under a contract entered
4 into before the date of the enactment of this Act.

5 (d) RULEMAKING.—Not later than 6 months after
6 the date of the enactment of this Act, the Secretary of
7 Energy shall issue a rule for the implementation of the
8 amendment made by subsection (b).

Passed the House of Representatives November 27,
2001.

Attest:

JEFF TRANDAHL,

Clerk.

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